

**REMARKS**

The Official Action mailed December 22, 2003, has been received and its contents carefully noted. Filed concurrently herewith is a *Request for One Month Extension of Time*, which extends the shortened statutory period for response to April 22, 2004. Accordingly, the Applicants respectfully submit that this response is being timely filed.

The Applicants note with appreciation the consideration of the Information Disclosure Statement filed on June 7, 2000, and corrected on August 11, 2000, and October 4, 2000.

The Applicants note the Examiner's statement with respect to the *partial* consideration of the Information Disclosure Statements filed on April 14, 1998, and January 25, 2002.

With respect to the IDS filed April 14, 1998, the Examiner acknowledges that the Chandani et al. article, "Antiferroelectric Chiral Smectic Phases Responsible for the Tristable Switching in MHPOBC" (Paper No. 14) has not been considered by the Examiner, and it is noted that "the Examiner will [reconsider] such papers when they are all located in [the] file" (page 4, Final Official Action). It is noted that under 37 CFR 1.98(d)(1), the Applicants are permitted to rely on an earlier submission of prior art in a parent application and that a copy of the Chandani article is available in a parent application, Serial No. 08/278,088, filed July 20, 1994, or Serial No. 08/592,672, filed January 26, 1996.

Therefore, pursuant to 37 CFR 1.98(d)(1), the Applicants respectfully request that the Examiner attempt to locate the Chandani article in the '088 or '672 application. If the Chandani article can be located by the Examiner in the '088 or '672 application, then the Applicants respectfully request that the Chandani article be considered by the Examiner, and that the Examiner provide an initialed copy of the Form PTO-1449 evidencing consideration of the above-referenced Information Disclosure Statement. If the Chandani article cannot be located by the Examiner in the '088 or '672 application,

then the Applicants respectfully request that the Examiner indicate this fact in a subsequent communication.

With respect to the IDS filed January 25, 2002, and partially considered August 13, 2002, the Examiner continues to assert that Serial No. 09/781,154 "has not consideration as prior art" (page 3, Final Official Action). It appears that the Examiner has fully considered the '154 application in connection with the subject application, but such consideration has not been indicated on the record. As noted in MPEP § 2001.06(b), the Applicants are under a duty of disclosure which includes copending applications. The Applicants respectfully submit that the IDS filed January 25, 2002, including the reference to the '154 application, fully complies with 37 CFR 1.98 and should be considered by the Examiner. The Applicants recognize that the Examiner may have crossed through the citation to the '154 application on the Form PTO-1449 because he does not wish the '154 application to be printed on the face of the patent. If this is the case, the Examiner still must indicate that the '154 application has been considered. Therefore, the Applicants respectfully request that the Examiner at least provide a statement on the record that the '154 application has been considered by the Examiner.

Claims 31-33, 38, 39, 46-51, 55-58, 65-67, 69, 83-94, 99, 106-110 and 115-135 were pending in the present application prior to the above amendment. Claims 67 and 69 have been canceled. Accordingly, claims 31-33, 38, 39, 46-51, 55-58, 65, 66, 83-94, 99, 106-110 and 115-135 are now pending in the present application, of which claims 31-33, 55, 56, 99, 109, 116, 117 and 128 are independent. Claims 38, 39, 83-94, 99, 106-108, 116-119, 122, 123 and 128-132 have been withdrawn from consideration. Accordingly, claims 31-33, 46-51, 55-58, 65, 66, 109, 110, 115, 120, 121, 124-127 and 133-135 are currently elected, of which claims 31-33, 55, 56 and 109 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

Paragraph 2 of the Official Action rejects claims 67 and 69 as obvious based on the combination of U.S. Patent No. 4,796,979 to Tsuboyama and U.S. Patent No. 4,775,225 to Tsuboyama et al. In response, the Applicants have canceled claims 67 and 69. Therefore, the rejection is now moot.

Paragraph 4 of the Official Action rejects claims 31-33, 49-51, 55-58, 65-67, 69, 109, 110, 115, 120, 121, 124-127 and 133-135 under the doctrine of obviousness-type double patenting over claims 1-4 and 17-19 of U.S. Patent No. 5,594,569 to Konuma et al.

As stated in MPEP § 804, under the heading "Obviousness-Type," in order to form an obviousness-type double patenting rejection, a claim in the present application must define an invention that is merely an obvious variation of an invention claimed in the prior art patent, and the claimed subject matter must not be patentably distinct from the subject matter claimed in a commonly owned patent. Also, the patent principally underlying the double patenting rejection is not considered prior art.

The Applicants respectfully traverse the obviousness-type double patenting rejection because the independent claims of the present invention are patentably distinct from the claims of Konuma. Specifically, the independent claims of the present invention recite a spacer which is distinct from the resin formed between the first and second substrates. Further, the independent claims of the present invention recite that the resin has a column shape.

At best, claims 1-4 and 17-19 of Konuma appear to teach that "means, comprising a resin, for decreasing an orientation regulating force of said orientation control means with respect to said liquid crystal layer is provided between said liquid crystal layer and said orientation control means in the form of a plurality of grains" (claim 1) and that "said resin is interposed between said liquid crystal layer and said orientation control means in the form of a film" (claim 3). However, claims 1-4 and 17-19 of Konuma do not teach or suggest a spacer at all, much less a spacer which is distinct from the resin formed between the first and second substrates. Also, claims 1-4

and 17-19 of Konuma do not teach or suggest that the resin has a column shape. Although the specification of the Konuma patent appears to teach a spacer 8 and resin 21, as stated above, the patent principally underlying the double patenting rejection is not considered prior art.

The Applicants respectfully submit that the subject application is patentably distinct from the claims of the Konuma patent. Reconsideration of the obviousness-type double patenting rejection is requested.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

  
Eric J. Robinson  
Reg. No. 38,285

Robinson Intellectual Property Law Office, P.C.  
PMB 955  
21010 Southbank Street  
Potomac Falls, Virginia 20165  
(571) 434-6789